

MERCHANT, GOULD; SMITH, EDELL, WELTER & SCHMIDT

# United States Patent Application

## COMBINED DECLARATION AND POWER OF ATTORNEY

As a below named inventor I hereby declare that: my residence, post office address and citizenship are as stated below next to my name; that

I verily believe I am the original, first and sole inventor (if only one name is listed below) or a joint inventor (if plural inventors are named below) of the subject matter which is claimed and for which a patent is sought on the invention entitled: DEVICE AND METHOD FOR MONITORING BREATHING DURING SLEEP, CONTROL OF CPAP TREATMENT, AND PREVENTING APNEA

The specification of which

a.    is attached hereto

b. X was filed on July 30, 1993 as application serial no. 08/100,556 and was amended on    (if applicable) (in the case of a PCT-filed application) described and claimed in international no.    filed    and as amended on    (if any), which I have reviewed and for which I solicit a United States patent.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to the examination of this application in accordance with Title 37, Code of Federal Regulations, § 1.56 (see page 3 attached hereto).

I hereby claim foreign priority benefits under Title 35, United States Code, § 119/365 of any foreign application(s) for patent of inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on the basis of which priority is claimed:

a.    no such applications have been filed.

b. X such applications have been filed as follows:

### FOREIGN APPLICATION(S), IF ANY, CLAIMING PRIORITY UNDER 35 USC § 119

COUNTRY	APPLICATION NUMBER	DATE OF FILING (day, month, year)	DATE OF ISSUE (day, month, year)
Australia	PI 2730	26 June 1987	
Australia	PI 4234	8 September 1987	
	PCT/AU88/00215	27 June 1988	

### ALL FOREIGN APPLICATIONS, IF ANY, FILED BEFORE THE PRIORITY APPLICATION(S)

COUNTRY	APPLICATION NUMBER	DATE OF FILING (day, month, year)	DATE OF ISSUE (day, month, year)

I hereby claim the benefit under Title 35, United States Code, § 120/365 of any United States and PCT international application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, § 112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, § 1.56(a) which occurred between the filing date of the prior application and the national or PCT international filing date of this application.

U.S. APPLICATION NUMBER	DATE OF FILING (day, month, year)	STATUS (patented, pending, abandoned)
07/457,757	21 December 1989	abandoned
458,108	5 July 1990	abandoned

I hereby appoint the following attorney(s) and/or patent agent(s) to prosecute this application and to transact all business in the Patent and Trademark Office connected herewith:

Adriano, Sarah B.	Reg. No. 34,470	Gabilan, Mary Susan	Reg. No. P-38,729	Reich, John C.	Reg. No. 37,703
Battli, Brian H.	Reg. No. 32,960	Gates, George H.	Reg. No. 33,500	Reiland, Earl D.	Reg. No. 25,767
Beard, John L.	Reg. No. 27,612	Golla, Charles E.	Reg. No. 26,896	Schmidt, Cecil C.	Reg. No. 20,566
Beck, Robert C.	Reg. No. 28,194	Gould, John D.	Reg. No. 18,223	Schuman, Mark D.	Reg. No. 31,197
Bejin, Thomas E.	Reg. No. 37,089	Gresens, John J.	Reg. No. 33,112	Schumann, Michael D.	Reg. No. 30,422
Berman, Charles	Reg. No. 29,249	Hamre, Curtis B.	Reg. No. 29,165	Sabald, Gregory A.	Reg. No. 33,280
Bogucki, Raymond A.	Reg. No. 17,426	Hassing, Thomas A.	Reg. No. 36,159	Smith, Jerome R.	Reg. No. 35,684
Bruess, Steven C.	Reg. No. 34,130	Hillson, Randall A.	Reg. No. 31,838	Sorensen, Andrew D.	Reg. No. 33,606
Byrne, Linda M.	Reg. No. 32,404	Hollingsworth, Mark A.	Reg. No. P-38,491	Stinebruner, Scott A.	Reg. No. P-38,323
Carlson, Alan G.	Reg. No. 25,959	Kastelic, Joseph M.	Reg. No. 37,160	Strawbridge, Douglas A.	Reg. No. 28,376
Carter, Charles G.	Reg. No. 35,093	Kowalchuk, Alan W.	Reg. No. 31,535	Strodthoff, Kristine M.	Reg. No. 34,259
Caspers, Philip P.	Reg. No. 33,227	Kowalchuk, Katherine M.	Reg. No. 36,848	Summer, John P.	Reg. No. 29,114
Clifford, John A.	Reg. No. 30,247	Krull, Mark A.	Reg. No. 34,205	Summers, John S.	Reg. No. 24,216
Conrad, Timothy R.	Reg. No. 30,164	Lasky, Michael B.	Reg. No. 29,555	Tellekson, David K.	Reg. No. 32,314
Daignault, Ronald A.	Reg. No. 25,968	Lynch, David W.	Reg. No. 36,204	Underhill, Albert L.	Reg. No. 27,403
Daley, Dennis R.	Reg. No. 34,994	Mau, Michael L.	Reg. No. 30,087	Vandenburgh, J. Derek	Reg. No. 32,179
DeFrank, Edmond A.	Reg. No. 37,814	McDonald, Daniel W.	Reg. No. 32,044	Vietzke, Lance L.	Reg. No. 36,708
DiPietro, Mark J.	Reg. No. 28,707	McDonald, Wendy M.	Reg. No. 32,427	Welter, Paul A.	Reg. No. 20,890
Edell, Robert T.	Reg. No. 20,187	Nelson, Albin J.	Reg. No. 28,650	Williams, Douglas J.	Reg. No. 27,054
Farber, Michael B.	Reg. No. 32,612	Plunkett, Theodore	Reg. No. 37,209	Wood, Gregory B.	Reg. No. 28,133
		Pollinger, Steven J.	Reg. No. 35,326	Yip, Philip S.	Reg. No. 37,265

I hereby authorize them to act and rely on instructions from and communicate directly with the person/assignee/attorney/firm/organization/who/which first sends/sent this case to them and by whom/which I hereby declare that I have consented after full disclosure to be represented unless/until I instruct Merchant, Gould to the contrary

Please direct all correspondence in this case to Merchant, Gould, Smith, Edell, Welter & Schmidt at the address indicated below:  
1000 Norwest Center, 55 East Fifth Street  
St. Paul, Minnesota 55101

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full Name Of Inventor	Family Name	First Given Name	Second Given Name
Residence & Citizenship	Sullivan	Colin	Edward
City	Sydney	State or foreign country	Country of Citizenship
Post Office Address	Australia	City	Australia
	27 Wharf Road, Birchgrove	Sydney	State & Zip Code/Country
			Australia/NSW/2041
Full Name Of Inventor	Family Name	First Given Name	Second Given Name
Residence & Citizenship	Lynch	Christopher	
City	376 Lane Cove Road, North Ryde	State or foreign country	Country of Citizenship
Post Office Address	Australia	City	Australia/NSW/2113
			State & Zip Code/Country
Full Name Of Inventor	Family Name	First Given Name	Second Given Name
Residence & Citizenship			
City		State or foreign country	Country of Citizenship
Post Office Address		City	State & Zip Code/Country
Signature of Inventor 201	Signature of Inventor 202	Signature of Inventor 203	
Date	Date	Date	
31 Oct 94	31 Oct. 1994		

Additional Inventors:  
Indicate here and attach sheet with same information, including date and signature.

§ 1.56 Duty to disclose information material to patentability.

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by " 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

- (1) prior art cited in search reports of a foreign patent office in a counterpart application, and
  - (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.
- (b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and
- (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
  - (2) It refutes, or is inconsistent with, a position the applicant takes in:
    - (i) Opposing an argument of unpatentability relied on by the Office, or
    - (ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

- (c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:
- (1) Each inventor named in the application;
  - (2) Each attorney or agent who prepares or prosecutes the application; and
  - (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.
- (d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.

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PATENT APPLICATION DECLARATION  
(Attorney's Docket No.: 2885.1-1)

Each of the Applicants named below hereby declares as follows:

1. My residence, post office address and country of citizenship given below are true and correct.

2. I believe I am the original, first and joint inventor of the invention claimed in the attached patent application specification entitled DEVICE FOR MONITORING BREATHING DURING SLEEP AND CONTROL OF CPAP TREATMENT, for which a patent is sought, and I have reviewed and understand the contents of the attached specification, including its claims.

3. I acknowledge my duty to disclose information of which I am aware which is material to the examination of this application. I understand that information is material where there is a substantial likelihood that a reasonable patent examiner would consider it important in deciding whether to allow the attached application to issue as a patent.

4. This application is a continuation-in-part of my copending application Serial Number 07/457,757, filed December 21, 1989. I acknowledge my duty to disclose information of which I am aware which is material to the examination of the accompanying application, which occurred between the filing date of that application and the filing date of the attached application.

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Additionally, the undersigned hereby appoint the following as attorneys and agents to prosecute said patent application, to transact all business in the Patent and Trademark Office connected therewith, to receive the original Letters Patent and to substitute or associate other attorneys on my behalf:

Gerald P. Parsons	Registration No. 24,486
Martin F. Majestic	Registration No. 25,695
J. Suzanne Siebert	Registration No. 28,758
James S. Hsue	Registration No. 29,545
Philip Yau	Registration No. 32,892

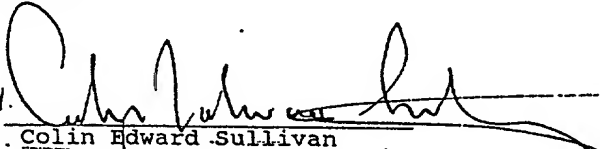
Please send all correspondence to:

600  
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Facsimile: 415/362-5418

Date:

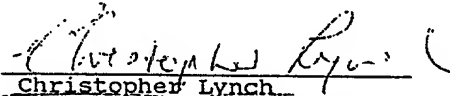
27 June 1990

  
Colin Edward Sullivan

Residence and 27 Wharf Road, Birchgrove  
Post Office Address: Sydney, NSW 2041 Australia  
(Citizenship: Australia)

Date:

June 26, 1990

  
Christopher Lynch

Residence and 376 Lane Cove Road, North Ryde  
Post Office Address: Sydney, NSW 2113 Australia  
(Citizenship: Australia)

# IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re PATENT APPLICATION of  
Inventor(s): SULLIVAN

\*Group Art Unit: 3737

Examiner: B. Casler

Appln. No.: 08/934,176

series code ↑ ↑ serial no.

Atty. Dkt: PM 270907 / P03US2

Filing Date:

M# / Client Ref.

Title:

## POWER OF ATTORNEY FROM ASSIGNEE AND REVOCATION OF PRIOR POWERS

Asst. Commissioner of Patents  
Washington, D.C. 20231

Sir:

The undersigned being the assignee of record in the above-entitled patent application as shown by the chain of title from the original owner to the assignee as recorded in prior Appln. No. 07/548,108 on:

1. Date	<u>October 19, 1990</u>	, Reel	<u>5483</u>	, Frame	<u>0133</u>
2. Date	<u>                    </u>	, Reel	<u>                    </u>	, Frame	<u>                    </u>
3. Date	<u>                    </u>	, Reel	<u>                    </u>	, Frame	<u>                    </u>

hereby revokes all previous powers and appoints Pillsbury Madison & Sutro LLP, Intellectual Property Group, 1100 New York Avenue, NW, Ninth Floor, Washington, DC 20005-3918, telephone (202) 861-3000 (to whom all communications about this application are to be directed), and the below named persons (of the same address), individually and collectively, our attorneys to prosecute this patent application and to transact all business in the Patent and Trademark Office connected therewith and with the resulting patent:

Paul N. Kokulis	16773
Raymond F. Lippitt	17519
G. Lloyd Knight	17698
Kevin E. Joyce	20508
George M. Sirilla	18221
Donald J. Bird	25323
Peter W. Gowdey	25872
Dale S. Lazar	28872
Glenn J. Perry	28458
Kendrew H. Colton	30368
Paul E. White, Jr.	32011
G. Paul Edgell	24238
Lynn E. Eccleston	35861
David A. Jakopin	32995
Mark G. Paulson	30793

Timothy J. Klima	34852
Stephen C. Glazier	31361
Ruth N. Morduch	31044
Richard H. Zaitlen	27248
Roger R. Wise	31204
Jay M. Finkelstein	21082
Michael R. Dzwonczyk	36787
W. Patrick Bengtsson	32456
Jack S. Barufka	37087
Adam R. Hess	41835
William P. Atkins	38821
Paul L. Sharer	36004

ResMed limited (formerly known as  
ResCare Limited)

Assignee

By

Name: Paul Green  
Title: Patents Officer

Date

June 26, 2002

Atty/Sec: GJP/MLM

# IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re PATENT APPLICATION of

Inventor(s): SULLIVAN et al.

Appln. No.            /New             
series code    ↑        ↑ serial no.

Group Art Unit: 3737

Filed: January 18, 2002

Examiner: Casler, B.

Title: METHOD AND APPARATUS USEFUL IN THE DIAGNOSIS OF  
OBSTRUCTIVE SLEEP APNEA OF A PATIENT (as amended)

Date January 18, 2002

## ASSOCIATE POWER OF ATTORNEY

Asst. Commissioner of Patents  
Washington, D.C. 20231

Sir:

The undersigned attorney of record in this case hereby appoints as  
associate attorney:

Paul T. Bowen Reg. No. 38009 to transact all  
business in the Patent and Trademark Office connected with the subject application.

Please to direct all communications about this application to:

Paul T. Bowen  
Pillsbury Winthrop LLP, 1600 Tysons Blvd., McLean, VA 22102

Respectfully submitted,

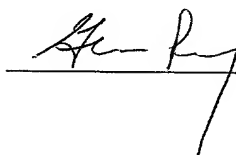
Pillsbury Winthrop LLP  
Intellectual Property Group

1600 Tysons Boulevard  
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Atty/Sec: gjp/dlh

By Atty: Glenn J. Perry Reg. No. 28458

Sig:



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